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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/624,373 | 07/22/2003 | Kevin L. Parsons | 89390 | 3640 |
| 24628 | 7590 | 01/12/2006 | | |
| WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606 | | | EXAMINER NEILS, PEGGY A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2875 | |

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,373

Applicant(s)

PARSONS, KEVIN L.

Examiner

Peggy A. Neils

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Response to Amendment

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 3, 5 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu et al.

Yu et al shows a flashlight with a body portion 10 with a spring clip 32 at one end and a light emitting diode (LED, 14) at the opposite end. A battery 40 provides power to the flashlight and switch 28 is capable of provide intermittent or continuous activation of the LED. The leads 48, 50 of the LED are disposed on opposite sides of the battery. The body portion 18 is structured with a recess 38 in a bottom portion and an open top 20 portion. Regarding, Applicant's amended claim language, Yu et al shows a spring 32 extending out from on side of the frame 16 which overlaps and engages with an arm 30. As shown in Figure 1, the two elements cooperate in the same manner set forth in Claim 1. While spring 32 is a separate structural element it is readable as functioning as an arm which engages with the opposite arm. The fact that Applicant claims that the arms are integral is not considered a patentable difference over parts assembled together. The final operative product shown by Yu et al operates in the same manner. Regarding Claim 10, Yu et al states that the top and bottom covers are preferably made from a thermoplastic material (see column 2, line 35). This would suggest at least some

deformation characteristics. To include reinforcing rings on the cover is a design choice which depends on the strength and rigidity of the material used for the cover.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yu et al as applied to claim 1 above, and further in view of Hsu et al.

Yu et al shows the flashlight operating on a single battery. Hsu et al shows a similarly structured flashlight that uses two coin batteries. It would have been obvious to one skilled in the art that Yu et al could be modified to include two coin batteries in the same manner as taught by Hsu et al because the flashlight would function longer.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu et al as applied to claims 1 and 3 above, and further in view of Guthrie.

Guthrie teaches that it is known in the art to use an insulative disk between a flashlight switch and a battery surface. Yu et al has a switch on pedestal 62 contacting spring 54. Spring 54 is not shaped as a disk but accomplishes the same function for momentarily contacting the battery. Yu et al does state that other spring and switch mechanisms could be used to activate the flashlight (see column 3, beginning at line 18). It would be obvious to one skilled in the art that Yu et al could use an insulative disk in the switching mechanism in the same manner as taught by Guthrie because both references are directed to small compact flashlight mechanisms. Applicant has not addressed any specific comments regarding the teaching of Guthrie but instead relies on the arguments for the independent claims.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu et al as applied to claim 1 above, and further in view of Altman.

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Altman teaches that it is known in the art to have a small handheld flashlight with a removable bottom portion 18. It would be obvious to one skilled in the art that the flashlight of Yu et al could be modified to provide for a removable bottom portion in the same manner as taught by Altman because both references are direct to small compact type flashlights. Yu et al states that the frame is metal. As a metal frame will function in the same manner as a plastic frame the choice of one or the other would be a design choice. Applicant has not addressed any specific comments regarding the teaching of Altman but instead relies on the arguments for the independent claims.

Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu in view of Yu et al.

Hsu shows a flashlight which includes two batteries 50 to operate the flashlight. As shown in Figure 6, the top and bottom portions of the flashlight are formed of an elastomeric material that permits temporary deformation of the top cover for intermittent illumination of the flashlight. A plurality of rings 61 and 62 are formed in the top surface. Hsu et al shows a key ring 70. Yu et al teaches that it is known in the art to have a split ring key ring formed from two arms extending out from the side of the body/frame 16 in an overlapping manner. It would have been obvious to one skilled in the art that Hsu could be modified to include a split ring key ring in the same manner as taught by Yu et al because both references are directed to similarly structured flashlights. The fact that Applicant claims that the arms are integral is not considered a patentable difference over parts assembled together. The final operative product shown by Yu et al operates in the same manner. Applicant has argued that Hsu is plastic and that rings 61 permit

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section 63 to flex so that the circuit be engaged and refers to Figure 6 of the patent.

Claim 15 recites that at least a portion of the top cover is formed of an elastomeric material. Since Figure 6 shows that the top cover can be flexed/deformed to activate the flashlight and since Hsu states that the cover is molded from plastic suggests a limited amount of elastomeric characteristics. Otherwise, the switch would not function.

Claim 15 as amended does not define over the combination of references.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu and Yu et al as applied to claims 15, 16, and 17 respectively, and further in view of Guthrie.

Guthrie teaches that it is known in the art to use an insulative disk between a flashlight switch and a battery surface. Hsu in Figure 6 shows the switch directly contacting the lead of the LED and moving it into contact with the battery. It would have been obvious to one skilled in the art that Hsu could be modified to use a disk between the switch and LED lead in the same manner as taught by Guthrie as both flashlights are similarly structured. Applicant has not addressed any specific comments regarding the teaching of Guthrie but instead relies on the arguments for the independent claims.

Claims 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu and Yu et al as applied to claim 15 above, and further in view of Altman.

Altman teaches that it is known in the art to have a small handheld flashlight with a removable bottom portion 18. It would be obvious to one skilled in the art that the flashlight of Hsu could be modified to provide for a removable bottom portion in the same manner as taught by Altman because both references are direct to small compact

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type flashlights. The material of the bottom is not considered pertinent to the operation of the flashlight device and hence is considered a design feature. Applicant has not addressed any specific comments regarding the teaching of Altman but instead relies on the arguments for the independent claims.

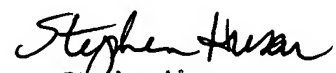
Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications should be directed to Examiner Neils at (571) 272-2377 on a Monday or Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378.


Stephen Husar
Primary Examiner